IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 609 OF 1988

Laxman Hari Tambe
Since deceased by heirs :

a) Smt. Sushila Laxman Tambe
Aged about 80 years.
b) Avinash Laxman Tambe
Aged about 52 years.
c) Sou. Mandakini Purshuttom
Ambulkar,
Aged about 46 years.

Nos.(a0 and (b) residing at
Kuroli Khurd, Taluka Phaltan,
Dist: Satara.

No.(c) residing at Khamgaon,
Nr.Sham Talkies, Taluka Khamgaon,
Dist. Buldhana. .. Petitioners

Versus

1. Dattu Sonu Pawar
Since deceased by his heirs:
(a) Hindurao Dattu Pawar
(b) Vishnu Dattu Pawar
(c) Smt. Anjira Ramchandra Pawar
(ci)Smt. Sunita Rajendra Bhilare
(d) Sou. Savitrabai Vasant Shirke
No.1(a), (b) and (c) residing
at Dhavadashi, Taluka Satara
Dist. Satara.
No.1(d) residing at Mhasve
Tal. Jaoli, Dist. Satara.

2. Shriram Hari Tambe
Since deceased by his heirs:
(A) Sulochana w/o Shriram Tambe
(B) Arun Shriram Tambe, aged 50 yrs.
(C) Sou. Bimba Madan Patil,
aged 53 yrs.
(D) Sou. Kunda Choudhary,

aged 48 yrs.
(E) Sou. Nalini Arun Kare
aged 44 yrs.
(F) Vasant Shriram Tambe
aged 42 yrs.
(G) Mukund Shriram Tambe
aged 38 yrs.

3. Ganesh Hari Tambe
since deceased by his heirs:
(3-a) Smt. Sudha Ganesh Tambe
(3-b) Bhaskar Ganesh Tambe
Both R/o. 242, Mangalwar
Peth, Satara, Dist. Satara.

(3-c) Anil Ganesh Tambe
C/o. Kashikar,
Cojtractors and Builders,
Shastri Nagar, Chandrapur,
Dist. Chandrapur.

(3-d) Smt. Shailaja Madhav Bhatawadekar
R/0 101, Nilkanth Apartment,
Gokuldas Pasta Road,
Dadar (E), Bombay.

4. The Maharashtra Revenue Tribunal
through its designated member
Shri N.P. Nikumbh. Notice to be
served upon the Registrar,
Maharashtra Revenue Tribunal
Secretariat Annexe Building
Bombay -1. ..Respondents

Mr. P.J. Shinde with Mr. H.D. Gole for petitioners.
Mr. S.S. Patwardhan for respondent nos.1(a) to 1(c).

CORAM: B.H. MARLAPALLE, J.

Date : July 12, 2006.

P.C.:

1. This petition filed under Article 227 of the Constitution impugns the Judgment and Order dated 6th

November, 1987 passed by the learned Member of the Maharashtra Revenue Tribunal, Pune thereby allowing the Revision Application No.279 of 1986. By the said order the application filed under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the Tenancy Act) came to be allowed. The factual matrix relevant to the present proceedings could be shortly stated as under.

. The agricultural lands admeasuring 1 acre and 18 gunthas located in Survey No.41/1 and 1 acre and 34 gunthas located in Survey No.41/3+4 of village Dhavadshi in Taluka and District Satara were under cultivation of Dattu Sonu Pawar for some years upto 1954-55 and his name came to be deleted from the column of cultivation by Mutation Entry No.1609 effected on 31/1/1956. Survey No.41/3+4 was formed by amalgamation of two separate survey numbers i.e. Survey No.41/3 and Survey No.41/4. Dattu Sonu Pawar, present respondent no.1, claimed to be in continuous cultivation inspite of the Mutation Entry No.1609 and by claiming himself to be the protected tenant under the Tenancy Act, he moved an application under Section 70(b) of the Tenancy Act on or about 18/12/1981 before

the Tahsildar and before approaching the Tahsildar he had issued a public notice dated 23/8/1981 informing that he was in cultivation of the suit land and the landlords i.e. present petitioners were likely to sell the said land. In response to this public notice, the Resident Nayab Tahsildar, Satara carried out inspection and submitted a Resolution/Declaration on 12/2/1982 in respect of the suit land confirming that the landlord Shri Tambe was not cultivating the suit land at any time and Shri Dattu Sonu Pawar was in possession and was cultivating the said land all along. The SDO, Satara by his order dated 10/9/1984 confirmed the Resolution/Declaration dated 12/2/1982 in Vahivat Appeal No.5 of 1982. The IIIrd Joint Civil Judge and JMFC, Satara decided Criminal Case No.1 of 1983 and acquitted the accused i.e. Hindura Dattu Pawar and Vishnu Dattu Pawar - two sons of the tenant. The application filed by the tenant under Section 70(b) of the Tenancy Act came to be registered as Tenancy Case No.141 of 1981 and the Tenancy Awal Karkun, Satara was pleased to reject the same vide his order dated 20/9/1985. This order was carried in Tenancy Appeal No.94 of 1985 by the tenant before the SDO, Satara and the said appeal also failed on

13/10/1986 and, therefore, the tenant approached the Maharashtra Revenue Tribunal and succeeded in terms of the impugned order.

2. The public notice dated 22/8/1981 published in a local newspaper called "Jiwhala" on 23/8/1981 through Mr. G.U. Dongre, Advocate had clearly stated that the suit land belonged to Shri Laxman Hari Tambe, resident of Satara City and it was under the cultivation of Shri Dattu Sonu Pawar for the last more than 60 years, the landlord was never in possession and cultivation of the said land and he was intending to sell the said land while he had no such right in law, the public notice was, therefore, informed not to enter in any sale transaction of the suit land with Shri Laxman Hari Tambe and the tenant was in continuous possession and cultivation of the suit land. In Tenancy Case No.141 of 1981 the landlord appeared and contested the claim of the tenant but did not disclose that the suit land was already sold to third parties. Whereas in the instant petition it has been stated by the petitioner landlord that the land in Survey No.41/3+4 was sold to Dyanu Bali Pawar for a consideration of Rs.20,000/- by registered sale deed

dated 21/9/1981 and the land in Survey No.41/1 was sold to Saibu Bali Pawar for a consideration of Rs.15,000/- by registered sale deed dated 14/12/1981. It has been further contended that both these brothers Dyanu and Saibu were put in possession of the land and they remained in possession. This statement does not appear in any of the orders passed by the revenue authorities i.e. Tenancy Awal Karkun, SDO as well as the Maharashtra Revenue Tribunal and as a result thereof the alleged purchasers could not be impleaded as necessary parties in the proceedings decided under the Tenancy Act. Even in this petition, the petitioner himself never took out any application to implead the alleged purchasers of the suit land, whereas the respondents-tenants insist that they are in possession and cultivation of the suit land as at present.

3. The parties had placed on record certain documents in support of their respective claims. The landlord had mainly relied upon the Mutation Entry No.1609 effected on 31/1/1956 thereby deleting the name of Dattu Sonu Pawar as the tenant and the tenant had relied upon the Mutation Entry No.1326 which was

effected on 17/5/1949. In addition, both the parties have placed on record some receipts of land revenue paid in respect of the suit land. The tenant relied upon 7/12 extracts as well. The Tahsildar considered two issues, namely,

(a) whether the applicant-tenant proved that he was cultivating the land prior to 1/4/1957? and

(b) whether the tenant proved that his application was within time?

Both the issues were answered in the negative i.e. against the tenant. The SDO agreed with these findings and further went to hold that the applicant was never cultivating the land either on the basis of oral or written agreement and, in fact, there was no evidence that he was giving any share of the crops to the landlord. The SDO also found fault with the tenant for his lacksity in not approaching the competent authority for fixation of purchase price by filing an application under Section 32G of the Tenancy

Act at any time till the application under Section 70(b) of the Tenancy Act was moved. On perusal of the record, the some of the observations made by the SDO need to be reproduced as under:-

> "...From perusal of the case-papers, it is seen that Dattu Sonu's name appears in "kul and khand" column from 1944-45 as "Reet-4" and paying 1/3 wata. The name of the present Appellant is deleted by M.E. No.1609 on 31/1/1956. From perusal of 7/12 extracts, it is seen that the name of present Respondent Laxman Hari Tambe appears in "kul and khand" column since 1954-55 to 1980-81 by "Reet-1" in both the suit lands. It means that he was himself cultivating the suit lands personally....."
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> "....If at all he was a tenant, it is not understood why he was silent and did not apply for fixing the purchase price under Section 32G upto 1981. Such an inquiry could have been started "suo motu" as well as under Section 9 of the B.T. & A.L. Act...."
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> "....There are two mutation entries i.e. M.E.No.1326, by which the name of Appellant was entered to R. of R. and M.E. No.1609 by which it was deleted. As these mutations run counter to the interest of both the parties and are under dispute, I find no reason to comment upon these entries and they deserve no fresh consideration, being certified by the competent authorities 26 years ago."

4. The Maharashtra Revenue Tribunal while finding faults with the view taken by the Awal Karkun as well as the SDO, noted that both of them committed manifest errors in reading the documents placed on record and

in applying the law laid down in the Judgment dated 22-7-1963 in Special C.A. 1600 of 1962 **(1970 TLR 261)**. The Tribunal also held that the authorities below had committed an error in holding that the application filed under Section 70(b) of the Tenancy Act was beyond limitations and it recorded a finding that as on 1/4/1957 it was the tenant Dattu Sonu Pawar who was cultivating the suit lands.

5. Section 70(b) of the Tenancy Act deals with the duties of the Mamlatdar and it states, inter alia, that it shall be the duty of the Mamlatdar to decide whether a person is or was at any time in the past, a tenant or a protected tenant or a permanent tenant. It does not lay down any time span as such for discharging such functions and duties by the Mamlatdar as set out in clauses (a) to (o) of the said section. It is a well settled position in law that so long as the applicant was in continuous possession of the suit land, he could move an application under Section 70(b) at any time and such an application would not be hit by limitations. Therefore, the moot question that arises for consideration is whether consequent to

M.E.No.1609 certified on 31/1/1956 the landlord had taken possession of the suit lands and was cultivating the said lands personally from the year 1956-57 to 1981-82. Merely deletion of the name of the tenant by M.E. No.1609 would not be sufficient to hold that the tenant ceased to cultivate the suit land from the year 1956-57 and he was not in cultivation when the application under Section 70(b) of the Tenancy Act was submitted by him. At the first instance it is pertinent to note that the public notice released by the tenant through his Advocate on 23/8/1981 was never contested by the landlord and it appears that inspite of this notice he proceeded to dispose off the land as has been disclosed for the first time in this writ petition. On the other hand, the tenant, who was alerted by the moves of the landlord to dispose off the suit land, not only acted by giving a public notice but proceeded to move an application. While his notice was under investigation by the Resident Nayab Tahsildar who had submitted Form No.14 on 13/10/1981, the tenant moved the application thereafter under Section 70(b) of the Tenancy Act.

6. It is shocking to note that neither the Tenancy Awal Karkun nor the SDO ever addressed to the Resolution dated 12/2/1982 and which was confirmed by the SDO, Satara on 10/9/1984. In the process of this Resolution dated 12/2/1982 the Nayab Tahsidar recorded statements of the Sirpanch, Police Patil of the village and the neighbouring land holders. The witnesses whose statements were recorded were Namdeo Narayan Pawar, Sirpanch, Balkrushna Jyoti Pawar, Police Patil and Ramchandra Balkrushna Pawar, Namdeo Keru Pawar, Bapu Maruti Anpat, Vyankat Narayan Pawar and Hari Bala Pawar, the neighbouring landlords. All these statements were recorded on 13/11/1981 and all of them confirmed that Dattu Sonu Pawar was cultivating the suit lands and originally the said lands were under cultivation of his grandfather. One of the witnesses, namely, Hari Bala Pawar was of 90 years of age when his statement was recorded on 13/11/1981 and he stated that his land was located on the Western side of the land in Survey No.41/3+4 and Dattu Sonu Pawar was cultivating the land in Survey No.41/3+4. He further stated that the grandfather of Dattu was the original tenant on the said land. The Tenancy Awal Karkun discarded these statements on the

ground that the witnesses were close relations of the tenant. Such a reason cannot be sustained in a fact finding inquiry when the Resident Nayab Tahsildar recorded the statements of Sirpanch, Police Patil and the neighbouring land holders. Unless there was some overwhelming documentary evidence to the contrary, it was not permissible for the Tenancy Awal Karkun as well as the SDO to discard the oral evidence. In fact, the Resident Nayab Tahsildar in his Resolution recorded a finding which has been subsequently confirmed by the SDO himself that it was Dattu Sonu Pawar who was cultivating the land all along and the landlord was not cultivating the same at any time and even when the inquiry was conducted and Form No.14 was submitted. Keeping in mind the provisions of the Tenancy Act, it was necessary for the Resident Deputy Collector or the SDO to initiate suo moto proceedings under Section 32G of the Tenancy Act immediately after the public notice published by the tenant rather than being satisfied by carrying out inquiry under M.L.R.C., 1966. It is evident that the officers concerned did not discharge their statutory duties to the extent they were expected to do. 7/12 extracts placed on record also support the case of the tenant

and the first such document in respect of Survey No.41/1 shows Raghu Rama Pawar cultivating the said land from the year 1938-39 and Dattu Sonu Pawar's name was entered in the cultivation column in the year 1950-51. From the year 1932-33 the name of Tukaram Bala Pawar appears till the year 1934-35 and subsequently his brother's name i.e. Shripati Balu Pawar appears for the year 1935-36. The second 7/12 extract in respect of the land in Survey No.41/3 admeasuring 39 gunthas and the name of Raghu Rama Pawar is shown as the cultivator from the year 1932-33. It also shows that he was cultivating the land by giving 2/3rd of the crop share to the landlord and Dattu Sonu Pawar's name has been entered in the year 1944-45 onwards till 1951-52. The third 7/12 extract is in respect of land in Survey No.41/4 admeasuring 35 gunthas and the name of Khasha Raghu Pawar appears for the year 1945-46 as cultivator on the basis of 2/3 crop share to the landlords (Vasudeo Krushna Tambe and Gopal Krushna Tambe). The name of Dattu Sonu Pawar has been entered for the year 1950-51 in respect of the said land and continued for the next year as well. In the year 1952-53 these two survey numbers i.e. Survey Nos.41/3 and 41/4 were

amalgamated and, therefore, the fourth 7/12 extract is in respect of the amalgamated land and it shows that for the year 1951-52 and 1953-54 the name of Dattu Sonu Pawar has been entered as the tenant. The landlord in his statement recorded during the inquiry carried out in October-November 1981 stated that he was cultivating the land by taking on hire the bullocks and the cultivators from the two sons of the tenant i.e. Hindurao and Vishnu. He also stated that in the year 1974 he had paid Rs.200/-, in the year 1975 Rs.300/-, in the year 1978 Rs.400/- and in the year 1979 Rs.450/- to these two sons by way of hire charges. He also admitted that Dattu and his sons were members of the same joint family. In the proceedings initiated under Section 70(b) the landlord placed on record some receipts purportedly signed by Hindura and Vishnu and both these sons of the tenant denied to have signed any receipt in favour of the landlord. Thus, the evidence of the landlord in support of his contentions that he was cultivating the lands from 1956-57 onwards could not be supported by any reliable evidence either placed in the inquiry held on 13/11/1981 or before the Tenancy Awal Karkun. The landlord failed to prove that consequent to the

Mutation Entry No.1609 certified on 31/1/1956 he was in continuous cultivation of the suit land. The findings recorded by the MRT will have to be, therefore, upheld on all the points and the Tribunal stepped in because the authorities below had fallen in manifest errors in considering the documents on record as well as the statements recorded during the inquiry held by the Resident Nayab Tahsildar. The overwhelming evidence available in support of the tenant's application was discarded by the Tenancy Awal Karkun as well as the SDO on erroneous grounds and, therefore, the MRT was justified in exercising the revisionary powers and setting aside the orders which were palpably erroneous passed by the said revenue authorities.

7. If the lands have been sold by the landlord even when the application was filed under Section 70(b) of the Tenancy Act, as noted earlier, the purchasers were not impleaded as a party and the landlord did not disclose this fact till the impugned order was passed by the MRT and, therefore, the sale transaction that is claimed to have taken place by the registered sale deeds will not come in the way of the

tenants in exercising their statutory rights under the Tenancy Act.

8. Mr. Shinde, the learned counsel for the petitioner-landlord relied upon the decision in the case of Maruti Bala Raut vs. Dashrath Babu Wathare and ors. **(AIR 1974 SC 2051)** in support of his contentions that the MRT could not have reappreciated the evidence and set aside the concurrent findings recorded by the Tenancy Awal Karkun and the SDO. The MRT has not reappreciated the evidence at the first place and it set aside the orders because both the Tenancy Awal Karkun as well as the SDO discarded the available evidence for palpably wrong reasons and some of the revenue documents, namely, 7/12 extracts were not at all considered by these revenue authorities. Therefore, the impugned order is not contrary to the law laid down in the case of Raut (Supra). The Supreme Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. vs. Govind Joti Chavare and ors. **(AIR 1975 SC 915)** considered the scheme of the Tenancy Act and more particularly the provisions of Section 5 read with Rule 2-A of the Bombay Tenancy and Agricultural Lands Rules 1956. The said requirements

were held to be mandatory and not directory. In para 12 of the said decision their Lordships stated thus:

> "12. It will be seen from a combined reading of these provisions that a surrender of tenancy by a tenant in order to be valid and effective must fulfil these requirements: (1) It must be in writing. (2) It must be verified before the Mamlatdar. (3) While making such verification the Mamlatdar must satisfy himself in regard to two things, namely, (a) that the tenant understands the nature and consequences of the surrender, and (b) that it is voluntary. (4) The Mamlatdar must endorse his findings as to such satisfaction upon the document of surrender."

. In the instant case, merely deletion of the name of the tenant by M.E.No. 1609 was not sufficient for the landlord to contend that he was cultivating the said land thereafter personally. It was necessary to prove by sufficient evidence that the tenant had surrendered the tenancy and the said surrender ought to satisfy the above mentioned tests in toto. There was no such evidence before either the Tenancy Awal Karkun or the SDO or even in the inquiry held on 13/11/1981 by the Resident Nayab Tahsildar.

9. In view of these, the following observations

of the Tenancy Awal Karkun have been rightly set aside

by the MRT in the impugned Judgment:

> "....The Opponent has produced the extract of Mutation No.1609 dated 2-8-55 which shows that the name of Applicant as a tenant has been deleted from other rights column of R. of R. of the suit lands. This mutation further shows that it has been effected on the Wardi report given by Shri Dattu Sonu Pawar. This shows that the Applicant has by free will and unconditionally surrendered his tenancy rights, in the lands in favour of the Opponent. This document is worth consideration and so accepted."

10. In the premises this petition fails and the same is hereby dismissed. Rule discharged. No costs.

(B.H. Marlapalle,J.)